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MAILED
SEP 13 2010
OFFICE OF PETITIONS

In re Patent No. 7,632,858	: DECISION ON REQUEST
Issued: December 15, 2009	: FOR RECONSIDERATION
Application No. 10/712,456	: OF PATENT TERM ADJUSTMENT
Filed: November 13, 2003	: AND
Attorney Docket No3800024.00560	: NOTICE OF INTENT TO ISSUE
/4207	: CERTIFICATE OF CORRECTION

This is a decision on the "LETTER REGARDING PATENT TERM ADJUSTMENT AT ISSUANCE PURSUANT TO COMMENT 43 OF THE FINAL RULE" filed February 8, 2010, requesting that the patent term adjustment determination for the above-identified patent be recalculated.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent, is adjusted by one thousand two hundred fourteen (1214) days and is **GRANTED to the extent indicated herein.**

It is undisputed that the period of examination delay, "A" delay", pursuant to 37 CFR 1.702(a)(1) and (a)(2) is 258 and 26 days. The "B" delay period, the over three year period begins on November 13, 2006 and ends on December 15, 2009, considering the 26 days of overlap for the period December 29, 2007 to January 24, 2008 is 1128 days. Additionally, for the filing of a Notice of Appeal on December 11, 2008, the 30 days of the over three year period consumed by appellate review, beginning on December 10, 2008 and ending on January 9, 2009, are not included in the B delay. See 35 U.S.C. § 154(b)(1)(B)(ii).

A review of the record reveals additional bases for entry of periods of reduction for applicant delay. Specifically, 37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(10) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months; ...

In this instance, after the mailing of a Notice of Allowance on July 7, 2009, on October 7, 2009, applicants filed an amendment under 1.312. On October 23, 2009, the examiner mailed a response to the amendment. Accordingly, pursuant to 37 CFR 1.704(c)(10), a period of reduction for applicant delay of 17 days, counting the number of days beginning on October 6, 2009 and ending October 23, 2009, should have been entered.

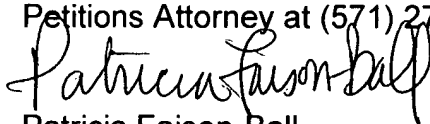
As such, the patent term adjustment is 1214 days (284 "A delay" days plus 1128 "B delay" days minus 26 overlap days minus 30 appellate review days minus 142 days applicant delay), not 753 days.

The Office acknowledges the authorization to charge the \$200.00 fee set forth in 37 CFR 1.18(e) to deposit account no. 02-1818.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand two hundred fourteen (1214) days**.

Telephone inquiries specific to this decision should be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT
UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,632,858 B2

DATED : December 15, 2009

INVENTOR(S) : Lawrence G. Hamann

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (753) days

Delete the phrase "by 753 days" and insert -- by 1214 days--